AMENDED IN SENATE AUGUST 7, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL No. 1909

Introduced by Assembly Member Vargas

January 26, 2006

An act to amend Section 11580.9, of the Insurance Code, relating to motor vehicle insurance coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 1909, as amended, Vargas. Motor vehicle insurance coverage.

Existing law provides that where 2 or more insurance policies apply to the same loss and one policy affords coverage to a named insured engaged in the business of renting or leasing motor vehicles without operators, it is conclusively presumed, subject to specified conditions, that the policy to the named insured shall be excess to the other valid and collectible insurance policy.

This bill would instead provide that where 2 or more insurance policies apply to the same loss and one policy affords coverage to a named insured who in the course of his or her business rents or leases motor vehicles without operators, it is conclusively presumed, subject to specified conditions, that the policy to the named insured shall be excess to the other valid and collectible insurance policy.

This bill would also provide that when 2 or more insurance policies apply to the same loss and one policy affords coverage to a person engaged in the business of a trucker, as defined, that policy shall be primary for both power unit and trailer or trailers, and the insurance afforded by the other policy shall be excess.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 11580.9 of the Insurance Code is amended to read:

11580.9. (a) Where two or more policies affording valid and collectible automobile liability insurance apply to the same motor vehicle in an occurrence out of which a liability loss shall arise, and one policy affords coverage to a named insured engaged in the business of selling, repairing, servicing, delivering, testing, road-testing, parking, or storing motor vehicles, then both of the following shall be conclusively presumed:

(1) If, at the time of loss, the motor vehicle is being operated by any person engaged in any of these businesses, or by his or her employee or agent, the insurance afforded by the policy issued to the person engaged in the business shall be primary, and the insurance afforded by any other policy shall be excess.

(2) If, at the time of loss, the motor vehicle is being operated by any person other than as described in paragraph (1), the insurance afforded by the policy issued to any person engaged in any of these businesses shall be excess over all other insurance available to the operator as a named insured or otherwise.

(b) Where two or more policies apply to the same loss, and one policy affords coverage to a named insured who in the course of his or her business rents or leases motor vehicles without operators, it shall be conclusively presumed that the insurance afforded by that policy to a person other than the named insured or his or her agent or employee, shall be excess over and not concurrent with, any other valid and collectible insurance applicable to the same loss covering the person as a named insured or as an additional insured under a policy with limits at least equal to the financial responsibility requirements specified in Section 16056 of the Vehicle Code. The presumption provided by this subdivision shall apply only if, at the time of the loss, the involved motor vehicle either:

(1) Qualifies as a “commercial vehicle.” For purposes of this subdivision, “commercial vehicle” means a type of vehicle subject to registration or identification under the laws of this state and is one of the following:

(A) Used or maintained for the transportation of persons for hire, compensation, or profit.

(B) Designed, used, or maintained primarily for the transportation of property.

(2) Has been leased for a term of six months or longer.

(c) Where two or more policies are applicable to the same loss arising out of the loading or unloading of a motor vehicle, and one or more of the policies is issued to the owner, tenant, or lessee of the premises on which the loading or unloading occurs, it shall be conclusively presumed that the insurance afforded by the policy covering the motor vehicle shall not be primary, notwithstanding anything to the contrary in any endorsement required by law to be placed on the policy, but shall be excess over all other valid and collectible insurance applicable to the same loss with limits up to the financial responsibility requirements specified in Section 16056 of the Vehicle Code. In that event, the two or more policies shall not be construed as providing concurrent coverage, and only the insurance afforded by the policy or policies covering the premises on which the loading or unloading occurs shall be primary and the policy or policies shall cover as an additional insured with respect to the loading or unloading operations all employees of the owner, tenant, or lessee while acting in the course and scope of their employment.

(d) Except as provided in subdivisions (a), (b), and (c), where two or more policies affording valid and collectible liability insurance apply to the same motor vehicle or vehicles in an occurrence out of which a liability loss shall arise, it shall be conclusively presumed that the insurance afforded by that policy in which the motor vehicle is described or rated as an owned automobile shall be primary and the insurance afforded by any other policy or policies shall be excess.

(e) Any insurance policy which, under the terms of subdivisions (a) to (d), inclusive, applies as excess coverage may provide with respect to any primary policy or to any loss to which primary insurance is not valid and collectible in whole or in part, that the excess policy shall apply only to the extent necessary to provide the insured with the coverage limits specified in Section 16056 of the Vehicle Code.

(f) The presumptions stated in subdivisions (a) to (d), inclusive, may be modified or amended only by written agreement signed by all insurers who have issued a policy or

policies applicable to a loss described in these subdivisions and all named insureds under these policies.

(g) Where two or more personal policies affording valid and collectible liability insurance apply to the same motor vehicle in an occurrence out of which a loss shall arise, and one policy, as defined in subdivision (a) of Section 660, is primary, either by its terms or by operation of law, and one or more of the personal policies providing liability insurance, as defined in Section 108, are excess, either by their terms or by operation of law, then the following shall apply:

(1) Each insurer shall pay its share of the defense costs. Each insurer's share of the defense costs shall be the percentage of the total defense costs equal to the amount of damage paid by that insurer as a percentage of total damages paid by all insurers whose policies apply to that motor vehicle.

(2) The term "defense costs" means, for purposes of this subdivision, reasonable attorney's fees and expenses, investigation expenses, expert witness fees, and costs allowable under Section 1033.5 of the Code of Civil Procedure.

(h) Notwithstanding subdivision (b), when two or more policies affording valid and collectible automobile liability insurance apply to a power unit and an attached trailer or trailers in an occurrence out of which a liability loss shall arise, and one policy affords coverage to a named insured in the business of a trucker, defined as any person or organization engaged in the business of transporting property by auto for hire, then the following shall be conclusively presumed: If at the time of loss, the power unit is being operated by any person in the business of a trucker, the insurance afforded by the policy to the person engaged in the business of a trucker shall be primary for both power unit and trailer or trailers, and the insurance afforded by the other policy shall be excess.

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(i) For purposes of this article, a certificate of self-insurance issued pursuant to Section 16053 of the Vehicle Code or a deposit of cash made pursuant to Section 16054.2 of the Vehicle Code or a bond in effect pursuant to Section 16054 of the Vehicle Code or a report of governmental ownership or lease filed pursuant to Section 16051 of the Vehicle Code shall be considered a policy of automobile liability insurance. However,

this subdivision does not establish or provide the basis for any other form of liability for or upon a self-insurer or other person or entity holding, issuing, or establishing any form of security as described herein.

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